

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION**

RETIREMENT COMMITTEE OF DAK
AMERICAS LLC, as Plan Administrator of
the DAK Americas LLC Pension Plan, et al.,

Plaintiffs,

v.

DAVID W. ALLEN, et al.,

Defendants.

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) Civil Action No. 7:14-CV-36-FL
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**AMENDED
CONSENT ORDER FOR PRELIMINARY INJUNCTION**

Plaintiffs Retirement Committee of DAK Americas LLC (the “Committee”), as Plan Administrator of the DAK Americas LLC Pension Plan (the “Plan”), and Transamerica Retirement Solutions Corporation (“Transamerica”) (collectively, “Plaintiffs”), and Defendants Mark Stephen Brewer, Harold E. Corbett, Warren Albert Garrison, James F. Holland, William Lacey Nelson, Sidney Hugh Rhodes, and Jimmie Ray Sellers, and David W. Allen, Joseph Alexander Bellamy, Jerome Bryant, Kelvin L. Galloway, Mendell W. Smith, Otella Irene Webb, Michael Lynn Bass, and Rodney B. Smith (collectively, “Consenting Defendants”), by and through their undersigned counsel, hereby stipulate and agree to the following:

1. Plaintiffs filed this action against David W. Allen, Michael Lynn Bass, Joseph Alexander Bellamy, Mark Stephen Brewer, Jerome Bryant, Harold E. Corbett, Kelvin L. Galloway, Warren Albert Garrison, James F. Holland, William Lacey Nelson, Sidney Hugh Rhodes, Jimmie Ray Sellers, Mendell W. Smith, Rodney B. Smith, and Otella Irene Webb (collectively, “Defendants”) on February 20, 2014, seeking to recover certain pension benefit

overpayments that Plaintiffs allege were erroneously distributed to Defendants. *See* Dkt. 1. The amounts in question are listed on Exhibit 1 to this Order under the column titled “Lump Sum Overpayment Amount.” The amounts are also listed on Exhibit 2 to the Complaint under the column titled “Lump Sum Overpayment Amount.” *See* Dkt. 1-2.

2. Plaintiffs also filed a motion for preliminary injunction, seeking a preliminary injunction imposing a constructive trust and/or equitable lien over all monies allegedly erroneously paid to Defendants and enjoining Defendants from spending, transferring, or otherwise disposing of such monies. *See* Dkt. 6.

3. Each Consenting Defendant is currently holding the amount of the alleged overpayment in an eligible retirement plan, account, or annuity.

4. Consenting Defendants deny that any monies are owed to Plaintiffs.

5. Plaintiffs and Consenting Defendants have consented to the entry of this preliminary injunction pending final resolution of this matter.

6. Nothing contained in this Consent Order shall be deemed to have waived any rights, remedies, or defenses of any party. This Consent Order is being entered solely for purposes of judicial economy and efficiency.

7. Because Plaintiffs and Consenting Defendants have consented to this Order, inquiry into the likelihood of success on the merits, irreparable harm, public interest, and any balancing of the hardships is not necessary at this time.

Until further order of this Court, **IT IS ORDERED THAT**

1. Pending final resolution of this matter, each Consenting Defendant is enjoined from spending, transferring, disposing of, or otherwise diminishing the monies that Plaintiffs claim were erroneously distributed to Consenting Defendants. The amounts in question in this

action and that are subject to this Consent Order are listed on Exhibit 1 of this Order under the column titled “Lump Sum Overpayment Amount” and Exhibit 2 to the Complaint under the column titled “Lump Sum Overpayment Amount.” See Dkt. 1-2.

2. Nothing in this Consent Order shall limit or restrict the Consenting Defendants from making investment changes within the Consenting Defendants investment accounts wherein the amounts in question in this action are currently being held, except that Consenting Defendants shall make no changes that diminish the monies that Plaintiffs claim were erroneously distributed to Consenting Defendants.

3. This Consent Order shall become effective upon entry by the Court.

IT IS SO STIPULATED AND AGREED, this 24th day of March, 2014.

/s/J. Scott Flowers

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IT IS SO ORDERED, this 24th day of March, 2014.



The Honorable Louise Wood Flanagan
U.S.D.J.